A

SIA PANG LIONG

v.

PP

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COURT OF APPEAL, PUTRAJAYA
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
AHMAD MAAROP JCA
[CRIMINAL APPEAL NO: B-05-152-2006]

C

28 FEBRUARY 2011

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1) - Trafficking in 2600.7 grams of heroin - Drugs strapped to appellant's legs - Whether drugs concealed with intent to traffic - Whether an innocent carrier - Analysis of drugs - Whether chemist complied with s. 37(j) of Act - Whether chain of evidence broken - Dangerous Drugs Act 1952, ss. 37(j), 39B(1), 39B(2)*

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The appellant, who was about to board a flight to Paris, was arrested at the departure gate of the Kuala Lumpur International Airport ('KLIA') and charged with trafficking in 2600.7 grams of heroin under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'), when four plastic packets containing the said drugs were found strapped to his legs. Upon the evidence adduced, particularly as to the manner in which the drugs were concealed, the learned judge opined that the prosecution had proved *mens rea* possession, and also trafficking under s. 2 of the Act. In his defence, the appellant did not dispute that the four plastic packets were strapped around his legs, but denied any knowledge thereof and contended that he thought that the wrappers contained Chinese medicine which he was supposed to deliver to Holland for a fee of RM20,000. The learned judge however rejected the defence, and consequently convicted the appellant and sentenced him to death. The appellant appealed and before the learned justices of appeal herein raised *inter alia* the following issues, namely: (i) that the appellant was an innocent carrier; (ii) that the Government chemist PW2 did not comply with s. 37(j) of the Act when she failed to analyse all the white substance in the four plastic packets; and (iii) the drugs had been tampered with and the drug exhibits that were tendered to court were not the drugs that were recovered from him.

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Held (dismissing appeal; affirming conviction and sentence) Per Hasan Lah JCA delivering the judgment of the court:

(1) The trial judge did not err in finding that the appellant knew that the contents of the four plastic packets were heroin. The manner the said packets were strapped to the appellant's thighs and calves and concealed underneath the pants were indicative of an intention to avoid detection thereby pointing to his knowledge. They gave rise to an inescapable inference that the appellant must have known that the plastic packets contained the dangerous drugs. The appellant, consequently, was not an innocent carrier. Further, if the four plastic packets contained only Chinese medicine, there was no reason for the appellant to be paid RM20,000 for delivering them to Holland, or for him to conceal them underneath his pants right away from KLIA. He could have put the plastic packets in his bag first because he was going to Paris first. The only reason why he did not keep the four plastic packets in his bag is because he knew they contained dangerous drugs. (paras 20-21 & 23)

(2) The failure of the chemist to take all the white substance in the four plastic packets did not in any way prejudice the appellant. There was clearly no issue of non-compliance of s. 37(j) of the Act here. From PW2's evidence it was clear that she had analysed almost all of the white substances handed to her and thereby making it unnecessary for the prosecution to rely on s. 37(j) of the Act. (para 26)

(3) The issue of whether the drugs had been tampered with had been considered by the trial judge who ruled that the same drug exhibits which were recovered from the appellant were sent to the chemist for analysis and later tendered in court. On the evidence available, this court has no reason to disagree with the finding. There was no basis for the defence's allegation that the drug exhibits had been tampered with or that there was a break in the chain of evidence and handling of the drug exhibits. (para 28-31)

Bahasa Malaysia *Translation Of Headnotes*

Perayu, ketika sedang menunggu untuk menaiki pesawat untuk penerbangan ke Paris, telah ditangkap di pintu berlepas Lapangan Terbang Antarabangsa Kuala Lumpur ('KLIA') dan dituduh dengan kesalahan mengedar 2600.7 gram heroin di bawah

A s. 39B(1) Akta Dadah Berbahaya 1952 ('Akta'), apabila empat paket plastik yang mengandungi dadah tersebut didapati terikat di kakinya. Berdasarkan keterangan yang dikemukakan, terutama berkaitan cara bagaimana dadah tersebut disorok, yang arif hakim memutuskan bahawa pendakwaan telah membuktikan milikan *mens* B *rea*, dan juga pengedaran di bawah s. 2 Akta. Dalam pembelaannya, perayu tidak menyangkal bahawa empat paket plastik ada terikat di kakinya, tetapi menafikan mempunyai pengetahuan mengenai kandungan dadah dengan berkata bahawa beliau menyangka paket-paket tersebut sebenarnya mengandungi C ubat-ubatan Cina yang beliau perlu hantar ke Belanda dengan upah RM20,000. Yang arif hakim bagaimanapun menolak pembelaan, dan berikutnya mensabitkan perayu dan menjatuhkan hukuman mati. Perayu merayu dan di hadapan yang arif hakim-hakim rayuan di sini membangkitkan antara lain isu-isu berikut, D iaitu: (i) bahawa perayu adalah seorang pembawa tidak berdosa; (ii) bahawa ahli kimia Kerajaan SP2 tidak mematuhi s. 37(j) Akta bilamana gagal menganalisa kesemua bahan putih di dalam empat paket plastik berkenaan; dan (iii) dadah telah diganggui dan eksibit dadah yang dikemukakan ke mahkamah bukan dadah yang sama E yang diambil darinya.

Diputuskan (menolak rayuan; mengekalkan sabitan dan hukuman)

Oleh Hasan Lah HMR menyampaikan penghakiman F **mahkamah:**

(1) Hakim bicara tidak salah apabila mendapati bahawa perayu tahu bahawa empat paket plastik tersebut mengandungi heroin. Cara empat paket plastik tersebut diikat pada peha dan betis perayu dan disorok di dalam seluar menunjukkan niat untuk G mengelak dari dikesan sekaligus menunjukkan pengetahuannya. Ia membangkitkan inferens tidak dapat tidak bahawa perayu semestinya mengetahui bahawa paket-paket plastik mengandungi dadah berbahaya. Oleh itu, perayu bukanlah seorang pembawa tidak berdosa. Selain itu, jika empat paket H plastik tersebut mengandungi ubat-ubatan Cina, maka tiada alasan mengapa perayu perlu dibayar RM20,000 untuk menghantarnya ke Belanda, atau untuk beliau menyoroknya di dalam seluar beliau sejak dari KLIA lagi. Beliau boleh meletakkan paket-paket plastik tersebut di dalam begnya I dahulu kerana beliau akan terlebih dahulu singgah di Paris.

Satu-satunya sebab mengapa beliau tidak menyimpan paket-paket plastik tersebut di dalam begnya adalah kerana beliau tahu ia mengandungi dadah berbahaya.

(2) Kegagalan ahli kimia untuk mengambil kesemua bahan putih di dalam empat paket plastik tidak walau dengan apa cara sekalipun menprejudiskan perayu. Jelasnya tidak terdapat sebarang isu ketakpatuhan terhadap s. 37(j) di sini. Dari keterangan SP2, jelas bahawa beliau telah menganalisa hampir kesemua bahan putih yang diserahkan kepada beliau yang sekaligus menjadikan tidak perlu bagi pendakwaan untuk bergantung kepada s. 37(j) Akta.

(3) Isu sama ada dadah telah diganggui telah dipertimbang oleh hakim bicara yang memutuskan bahawa eksibit dadah yang diambil dari perayu dan dihantar kepada ahli kimia untuk analisa dan kemudian dikemukakan ke mahkamah adakah eksibit dadah yang sama. Berdasarkan keterangan yang ada, mahkamah ini tiada alasan untuk tidak bersetuju dengan dapatan tersebut. Tiada asas bagi dakwaan yang dibuat oleh pembelaan bahawa eksibit dadah telah diganggui ataupun bahawa terdapat lompang pada rantaian keterangan dan cara menangani eksibit dadah tersebut.

Case(s) referred to:
Chu Tak Fai v. PP [2006] 4 CLJ 931 FC ***(refd)***
Lee Ah Seng & Anor v. PP [2007] 5 CLJ 1 FC ***(refd)***
Parlen Dadeh v. PP [2009] 1 CLJ 717 FC ***(refd)***
PP v. Ling Tee Huah [1980] 1 LNS 212 ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37(d), (da), (j), 39B(1)(a)

For the appellant - Joseph Tan; M/s Tan Chee Keong & Co
For the respondent - Kwan Li Sa; DPP

[Appeal from High Court, Shah Alam; Criminal Appeal No: 45-68-2004]

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Hasan Lah JCA:

[1] The appellant was charged for an offence of trafficking 2,600.7 grams of heroin under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ("the Act") and the charge reads as follows:

> Bahawa kamu pada 27 September 2003, jam lebih kurang 11.30 malam di Pintu Perlepasan Antarabangsa B2, KLIA di dalam Daerah Sepang dalam Negeri Selangor Darul Ehsan telah memperedarkan dadah berbahaya, iaitu Heroin seberat 2600.7 gram dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[2] At the conclusion of the trial the learned High Court Judge ("the trial judge") convicted the appellant for the offence as charged and he was accordingly sentenced to death.

[3] The appellant filed an appeal to this court against the decision. The appellant's appeal was dismissed. We now give the grounds for our decision.

Case For The Prosecution

[4] The case against the appellant as found by the trial judge is as follows. On 27 September 2003 at about 10.30pm Kunasegaran a/l Kandasamy (PW4) was on duty at B2 Departing Gate of the Kuala Lumpur International Airport ("KLIA") to check the passengers boarding flight MH20 to Paris. While he was checking on the passengers PW4 observed the appellant walking in a limping manner ("berjalan berjongket-jongket dengan keadaan tidak sempurna") when passing through the metal walk through detector. PW4 was shown a boarding pass by the appellant and from the boarding pass it was confirmed by PW4 that the appellant was one of the passengers to board the said flight to Paris.

[5] For security purposes PW4 conducted a body search on the appellant. PW4 found something bulky stuck to the appellant's right calf. Immediately PW4 contacted the narcotics officers from the Narcotics Department of KLIA.

[6] About 10 minutes later Detective Sergeant Alias bin Karim (PW5) and Detective Corporal Kamaruzzaman bin Awang came to Gate B2. PW4 and PW5 brought the appellant to a room next to Gate B2 for a body search. Inside the room PW4 asked the appellant to take off his pants. PW4 observed that there were four packets strapped to the appellant's legs. One packet was strapped with a knee guard to each side of the appellant's thigh and one packet was strapped with a transparent plastic to each side of the appellant's calves.

[7] From there the appellant was brought to the office of the Narcotics Department at KLIA which was located at the third floor for a thorough body search by PW4 and PW5. Inside a room at the Narcotics Department's office PW4 found that the four packets wrapped to the appellant's legs contained white powdery substance covered by black powdery substance. According to PW4 the appellant appeared to be scared and worried during the body search.

[8] After marking the items recovered from the appellant PW4 handed them over to the investigating officer, Acting ASP Lee Chee Yong (PW7) at about 3.30am, together with the appellant.

[9] PW7 sent the four plastic packets containing the black and white substances to the Government Chemist, Halimah binti Abdul Rahim (PW2). The contents of each of the four plastic packets were analysed by PW2 and they were found to contain a total of 2600.7 grams of heroin.

[10] The plastic wrappers (L1-L4), the knee guards (L5-L6) and the appellant's saliva specimens (L7) were sent for DNA analysis. DNA profiles were successfully obtained from the above samples, except the swab taken from plastic wrapper L4 and knee guards L5 and L6. On comparison with the appellant's DNA the results are as follows:

(a) the DNA profiles obtained from plastic wrapper L2 (wrapper wrapping the appellant's right calf) and plastic wrapper L3 (wrapper wrapping the appellant's left thigh) matched the appellant's DNA;

A (b) the DNA profile developed from the plastic wrapper L1 (wrapper wrapping the appellant's right thigh) revealed that it was a mixed profile consistent with having been contributed by at least two male sources, and the appellant was excluded as being one of the contributors of the mixed profiles.

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Case For The Defence

[11] In his defence the appellant did not dispute that the four plastic packets were strapped around his legs and he was on his way to board the flight to Paris. He, however, denied that he C knew that the four packets contained dangerous drugs. He believed the four plastic packets to contain Chinese medicine.

[12] According to the appellant, on the day in question before he went to KLIA he stayed at Hotel Park Inn at Sg. Wang Plaza. D Between 7 to 8pm two persons came to his room. He did not know them. These two persons brought with them a bag. They asked him to take off his pants. They wrapped four packets around his legs. When he asked them why must the four packets be wrapped around his legs he was told that the packets E contained Chinese medicine and it was illegal to bring Chinese medicine to Holland. They did not open the packets for him to see their contents. He was also given an air ticket, money and a phone card. They told him that his flight to Paris was at 11pm. He then took a taxi to KLIA.

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Findings Of The Trial Judge

[13] At the conclusion of the case for the prosecution the trial judge held that the prosecution succeeded in proving a *prima facie* case of trafficking against the appellant. The trial judge held that G the prosecution had proved *mens rea* possession of the proscribed drugs and trafficking as defined under s. 2 of the Act by the appellant. With regard to trafficking the trial judge opined that the manner the proscribed drugs were concealed and the fact that the appellant was carrying them would point irresistibly to the fact that H the appellant was trafficking in the proscribed drugs. The trial judge did not invoke the presumptions of possession and trafficking under s. 37(d) and s. 37(da) of the Act. The pertinent part of the judgment of the trial judge can be found at pp. 613 to 614 of the appeal record:

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58. Pada penutup kes pendakwaan, saya berpuas hati bahawa pihak pendakwa telah membuktikan, secara *prima facie*, bahawa Tertuduh menpunyai pemilikan sebenar (yakni pemilikan dengan *mens rea*) bagi dadah berbahaya yang menjadi hal perkara Pertuduhan dan telah juga membuktikan perbuatan mengedar seperti yang ditakrifkan dalam seksyen 2 ADB kerana dia didapati menyembunyikan, membawa dan dalam proses mengeksport dadah berbahaya yang berkenaan. Oleh yang demikian, pihak pendakwa telah berjaya membuktikan secara langsung bahawa Tertuduh melakukan perbuatan pengedaran dadah berbahaya yang menjadi hal perkara Pertuduhan pada masa dan di tempat yang disebut dalam Pertuduhan.

[14] Alternatively, the trial judge held that the prosecution had proved possession of the proscribed drugs by the appellant by invoking the presumption under s. 37(d) of the Act and further found that there was direct evidence of trafficking against the appellant. In this connection the trial judge said:

59. Secara alternatif, pihak pendakwa telah membuktikan, secara *prima facie* bahawa Tertuduh telah mengedar dadah berbahaya yang berkenaan kerana dia telah melakukan perbuatan yang termasuk dalam takrif istilah 'mengedar' dalam seksyen 2 ADB dan, dengan menggunakan anggapan di bawah perenggan 37(d) ADB, dia disifatkan memiliki dan tahu tentang jenis dadah berbahaya itu.

[15] With regard to the appellant's defence, the trial judge when rejecting the appellant's defence, took into consideration the appellant's evidence that if he were caught in Holland for carrying the Chinese medicine the item would only be seized by the authority there but there would be no action taken against him. Under cross-examination the appellant agreed that the four packets could be kept in his bag. The appellant also said he would be paid RM20,000 after he delivered them eventually. The trial judge found it rather odd for the appellant to take instruction from the two persons whom he did not know. The trial judge also took into consideration the appellant's evidence that he would be staying in Paris for three or four days. In Paris he would receive further instruction to whom to deliver the four packets. The trial judge was of the view that the appellant's story could not reasonably be true.

[16] Having carefully considered the defence, together with the evidence of the prosecution witnesses as a whole, the trial judge found that the appellant had failed to raise a doubt in the prosecution's case that he knew that the four plastic packets contained heroin. The trial judge further held that the prosecution had proved its case against the appellant beyond reasonable doubt and the appellant was convicted accordingly.

The Appeal

[17] There were altogether 18 grounds of appeal stated in the appellant's petition of appeal. However in his submission, learned counsel for the appellant raised the following issues:

(a) the appellant was an innocent carrier;

(b) the Government chemist, PW2, did not comply with s. 37(j) of the Act;

(c) the drug exhibits produced and tendered in court were not the drug exhibits recovered from the appellant;

(d) the appellant did not know the contents of the four plastic packets; and

(e) the time stated in the charge was incorrect.

Innocent Carrier And The Appellant's Knowledge

[18] Learned counsel for the appellant submitted that on the facts of this case the appellant was an innocent carrier as he believed the contents of the four plastic packets were Chinese medicine. The evidence showed that the white substance (the heroin) was covered with the black substance, (the coffee) and they were wrapped with the plastic. When he was stopped by PW4 he did not try to run away or become aggressive.

[19] Learned counsel for the appellant further submitted that as the appellant did not know the contents of the four plastic packets the prosecution had to rely on the presumption under s. 37(d) of the Act to prove possession against the appellant. According to learned counsel, there was no evidence of trafficking as defined under s. 2 of the Act. At most, he argued, the appellant should be convicted of possession of the proscribed drugs.

[20] We had carefully considered the judgment of the trial judge and the reasons given by her in her finding that the appellant knew the contents of the four plastic packets were heroin. We had no reason to disagree with her. In our view, the trial judge did not err in her decision on this issue. It is trite law that the appellate court ought to be slow in disturbing the finding of fact as the trial judge has had the benefit of observing the demeanour of the witnesses testifying before her (see *Lee Ah Seng & Anor v. PP* [2007] 5 CLJ 1).

[21] Proof of knowledge is very often a matter of inference. It would be sufficient for the prosecution to prove facts from which it could properly be inferred that the accused had the necessary knowledge (see *Parlan Dadeh v. PP* [2009] 1 CLJ 717). In the instant case the manner the four plastic packets were strapped to the appellant's thighs and calves and concealed underneath the pants would indicate an intention to avoid detection and thereby pointed to his knowledge. They would give rise to an inescapable inference that the appellant must have known that the four plastic packets contained the dangerous drugs.

[22] Having evaluated the appellant's defence the trial judge found that the defence was a bare denial. It is trite law that a mere denial without any other proof to reasonably dislodge the prosecution's evidence is not sufficient (see *Public Prosecutor v. Ling Tee Huah* [1980] 1 LNS 212). On the evidence we were unable to agree with the defence's contention that the appellant was an innocent carrier. The evidence did not support the defence of innocent carrier. The appellant had explained that the four plastic packets were concealed underneath his pants because it was illegal to bring them, of which he believed to be Chinese medicine, to Holland. The appellant testified that he was asked to carry the four plastic packets by two unknown persons to Holland and in return would be paid RM20,000. Under cross-examination he said that was the first time he met the two unknown persons.

[23] If the four plastic packets contained only Chinese medicine there was no reason for the appellant to be paid RM20,000 for delivering them to Holland and there was no reason to conceal them underneath his pants right away from KLIA. He could have put the four plastic packets in his bag first because he was going to Paris first. The only reason why he did not keep the four

plastic packets in his bag was that he knew that they contained dangerous drugs. If they were kept in his bag it was likely that the drugs would be detected at KLIA. On the evidence, and circumstances of the case we are of the view that the appellant could not be said to be an innocent carrier. Right from the beginning he was aware that the four plastic packets contained dangerous drugs. His defence, when tested against the totality of the evidence adduced, was difficult to be believed. More importantly, it failed to raise any reasonable doubt in the prosecution's case.

Section 37(j) Of The Act

[24] Learned counsel for the appellant contended that the Government chemist (PW2) did not comply with the provision of s. 37(j) of the Act because in SP2's evidence she said she had analysed all the receptacles. However according to the investigating officer (PW7) there were some white substance left in exh. P47 (exh. P47 was one of the plastic packets recovered from the appellant). Learned counsel submitted that there was no clear evidence as to how much of the drug exhibits were analysed by PW2.

[25] This issue had been considered by the trial judge and in her judgment she said:

> 31. Jelas pada saya bahawa sekiranya selepas serbuk putih dikeluarkan dari bungkusan asal "A1", "A2", "B1" dan "B2" masih ada bekas-bekas serbuk tinggal dalam bungkusan asal itu, bekas-bekas serbuk itu telah tidak diambil kira dalam pengiraan jumlah berat heroin dalam serbuk putih itu. Bukankah ini sebenarnya bererti bahawa jumlah berat heroin yang dilaporkan oleh SP2 (iaitu 2006.7 gram) adalah lebih rendah daripada jumlah sebenar seandainya SP2 berupaya mengambil kesemua serbuk putih dalam bungkusan asal itu sehingga ke zarah ("particle") yang terakhir? Saya tidak nampak bagaimana hakikat bahawa masih ada bekas-bekas serbuk dalam bungkusan asal dapat memudaratkan Tertuduh.

[26] The trial judge opined that the failure of the chemist to take all the white substance in the four plastic packets did not in any way prejudice the appellant. We agreed with the trial judge. Further, in our view there was no issue of non-compliance of

s. 37(j) of the Act in the present case. From SP2's evidence it was clear that she had analysed almost all of the white substances handed to her and thereby making it unnecessary for the prosecution to rely on s. 37(j) of the Act.

[27] In this connection the Federal Court in *Chu Tak Fai v. PP* [2006] 4 CLJ 931 at p 950 opined:

> … It is clear therefore that there is no requirement for the amount or the weight of the samples of the drug to be taken for the purpose of analysis by the chemist. It is up to the chemist to carry out the analysis scientifically. It is also for the chemist to determine the adequacy of the samples for the purpose of analysis. If the defence wishes to challenge the sufficiency of the weight of the drug analysed the chemist's evidence must be challenged and evidence in rebuttal must be led, if necessary.

Break In The Chain Of Evidence And Handling Of The Drug Exhibits

[28] Learned counsel for the appellant submitted that the drug exhibits produced and tendered in court were not the drug exhibits recovered from the appellant. He contended that the drug exhibits had been tampered with when they were left at the office of the Narcotics Department at the third floor of KLIA building. He argued that when PW4 escorted the appellant to the toilet, PW5 and Corporal Kamaruzzaman were not there to look after the drug exhibits.

[29] In support of that contention learned counsel for the appellant referred to the evidence of PW3, the Government Forensic Chemist, who had carried out DNA analysis on the samples from the plastic wrapper marked L1 where it was revealed that it was a mixed profile consistent with having been contributed by at least two male sources and the appellant was being excluded as being one of the contributors.

[30] The issue whether the drug exhibits had been tampered with at the office of the Narcotics Department in KLIA had been carefully considered by the trial judge. In her judgment the learned trial judge said:

25. Satu lagi perkara yang perlu dipertimbangkan berkaitan dengan identiti dadah berbahaya yang menjadi hal perkara Pertuduhan ialah perihal SP4 meninggalkan bilik pemeriksaan di Bilik Narkotik di Aras 3 untuk membawa Tertuduh ke bilik air. Peguambela telah meminta supaya SP4 dan SP5 dipanggil semula untuk diperiksa balas berkaitan dengan perkara ini. Dalam pemeriksaan balas itu, SP4 mengakui bahawa pada satu ketika semasa di Bilik Narkotik di Aras 3, dia telah membawa Tertuduh ke bilik air. Bagaimanapun dia menafikan bahawa pada ketika itu barang kes telah ditinggalkan tanpa jagaan. Kata SP4 barang kes ditinggalkan dalam jagaan SP5. Peguambela telah tidak meneruskan hajat untuk memanggil semula SP5.

26. Terdahulu, dalam keterangannya, SP5 mengatakan bahawa dia berada di pejabat pentadbiran di Bilik Narkotik. Pejabat itu terletak di sebelah bilik yang digunakan oleh SP4 untuk memeriksa Tertuduh dan menanggalkan barang kes daripada kaki Tertuduh. Daripada keterangan SP5, jelas bahawa walaupun dia tidak sepanjang masa berada di bilik pemeriksaan itu, dia nampak apa yang dilakukan di bilik itu. Maka tiada asas untuk saya menolak keterangan SP4 bahawa dia meninggalkan barang kes dalam jagaan SP5 sewaktu membawa Tertuduh ke bilik air.

Dapatan

27. Berdasarkan keterangan SP2, SP4, SP5 dan SP7, khususnya yang dibuat di atas, saya berpuas hati bahawa walaupun ASP Izanizam tidak dipanggil memberikan keterangan rantaian keterangan bagi barang kes "A1", "A2", "B1" dan "B2" dan kandungannya tidak terputus.

28. Saya juga berpuas hati bahawa bungkusan itu dan kandungannya merupakan barang kes yang ditemui pada peha dan betis tertuduh pada malam kejadian. Bungkusan dan kandungan itu jugalah yang telah kemudiannya dianalisis oleh SP2 yang mendapati bahawa serbuk putih dalam bungkusan di bahagian dalam "A1", "A2", "B1" dan "B2" itu mengandungi heroin sejumlah 2006.7 gram.

[31] On the evidence available we had no reason to disagree with the finding of the trial judge on this issue. We were satisfied that the same drug exhibits which were recovered from the appellant were sent to the chemist for analysis and later tendered in court. There was no basis to the defence's allegation that the drugs exhibits had been tampered with or there was a break in the chain of evidence and handling of the drug exhibits.

[32] PW4 confirmed and identified all the four plastic packets which contained the proscribed drugs seized from the appellant. The same exhibits were handed over to the investigating officer, PW7, at about 3.30am on 28 September 2002, which was about four hours after the drug exhibits were recovered from the appellant. PW7 handed over the drug exhibits to the Forensic Department for fingerprint analysis, then to PW3 for DNA analysis and finally to PW2 for drugs analysis. PW7 later received the drug exhibits back from PW2 and then sent them to PW1, the storekeeper, for safe keeping. PW2, PW4 and PW7 identified the exhibits relating to the drugs in court.

The Time Of The Charge

[33] Learned counsel for the appellant submitted that the time stated in the charge was not correct because in PW4's evidence PW4 said the appellant's body was searched in the room next to Gate B2 at about 10.50pm. The charge alleged the offence to take place at about 11.30pm.

[34] This issue had also been considered by the trial judge. In her judgment she said:

> 33. Memang benar, SP4 memberikan keterangan bahawa dia melihat Tertuduh berjalan dengan cara yang mencurigakan ("berjongkang-jongket") selepas melepasi "walk-through metal detector" di Pintu B2 pada jam kira-kira 10.30 malam. Juga benar bahawa masa yang disebut dalam Pertuduhan sebagai masa Tertuduh melakukan kesalahan mengedar dadah berbahaya di Pintu B2 ialah 11.30 malam. Adakah perbezaan masa itu mencacatkan kes pendakwaan?
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> 34. Mengikut keterangan SP4, seperti yang telah saya ringkaskan di bawah tajuk "Fakta Kes Mengikut Pendakwaan", selepas memeriksa Tertuduh dan mendapati ada benjolan pada peha kanan, SP4 telah menghubungi Pejabat Narkotik KLIA. Dua orang pegawai polis datang 10 minit kemudian. Tertuduh telah diperiksa oleh SP5. Tertuduh kemudian telah dibawa ke bilik pemeriksaan dan diperiksa sekali lagi, kali ini selepas seluarnya ditanggalkan. Pemeriksaan itu masih di kawasan Pintu B2. Hanya selepas SP5 menyelak pelindung lutut pada peha kanan Tertuduh barulah timbul syak. Masa 11.30 malam yang disebut dalam Pertuduhan dapat dijelaskan jika diambil kira urutan peristiwa di Pintu B2 dari masa Tertuduh mula melepasi "walk through metal detector" di Pintu itu.

[35] We agreed with the finding of the trial judge on this issue and as such we found no merit in the defence's contention with regard to the time of the offence.

[36] We had carefully considered the defence put up by the appellant and we were satisfied that the defence failed to raise any reasonable doubt in the prosecution's case with regard to *mens rea* possession and the element of trafficking in the proscribed drugs. We came to the conclusion that the trial judge was right in convicting the appellant for the offence of trafficking in the proscribed drugs.

[37] For the above reasons we found the appellant's appeal was devoid of any merit. The conviction and sentence imposed by the trial judge were therefore affirmed.